

ESTTA Tracking number: **ESTTA312745**

Filing date: **10/21/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
Correspondence Address	GARY A. CLARK, ESQ. SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET, 48TH FLOOR LOS ANGELES, CA 90071 UNITED STATES gclark@sheppardmullin.com, shwang@sheppardmullin.com
Submission	Opposition/Response to Motion
Filer's Name	Susan Hwang
Filer's e-mail	shwang@sheppardmullin.com
Signature	/Susan Hwang/
Date	10/21/2009
Attachments	Opposition to Motion to Compel Deposition.PDF ( 38 pages )(1731684 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL  
DEPOSITION OF MR. J. BAXTER BRINKMANN**

**I.**

**INTRODUCTION**

Opposer, Brink's Network, Inc., has moved to compel Applicant, The Brinkmann Corporation, to produce Mr. J. Baxter Brinkmann, President of Brinkmann, for his deposition in Washington D.C. and to supplement its discovery in response to Opposer's FIRST AND SECOND SETS OF INTERROGATORIES and FIRST AND SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS. Opposer has also requested that the Board stay proceedings pending disposition of its motion, and to reset discovery and testimony periods.

Pursuant to 37 C.F.R. § 2.127(a), Brinkmann responds by asking the Board to deny Opposer's request in its entirety. Certain of the relief sought by Opposer is contrary to the Trademark Rules of Practice, including Opposer's sanction request that Mr. Brinkmann's deposition be taken in Washington D.C., which is outside the federal judicial district where

Mr. Brinkmann resides, in Dallas, Texas. The rest of the relief sought by Opposer is unnecessary and unwarranted.

With respect to Opposer's request for deposition dates, Brinkmann wishes to emphasize that Mr. Brinkmann has never, at any time, refused to appear for his deposition. Instead, Brinkmann is waiting for Opposer to provide availability dates for certain proposed deponents from Opposer's side who reside in the Dallas, Texas area, so that they can be taken on a single trip. This is for the benefit of both parties and their counsel, given that Opposer's counsel resides in Washington, D.C. and Brinkmann's counsel resides in Los Angeles, California. Despite repeated requests, Brinkmann has not received any availability dates from Opposer. Mr. Brinkmann, however, remains cooperative in attempting to schedule his deposition for a date and place mutually convenient to both parties so that the relevant depositions can be completed together in an efficient manner.

With respect to Opposer's request that Brinkmann supplement its discovery responses, Brinkmann notes that Opposer has failed to comply with 37 C.F.R. § 2.120(e), which requires Opposer to append copies of the relevant discovery requests and responses to the motion. Opposer's failure to do so deflects the fact that most of Opposer's requests are improper under the Trademark Rules, and also leaves the Board unable to meaningfully rule on the motion to compel. Furthermore, Brinkmann has already produced non-privileged documents responsive to Opposer's FIRST AND SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS. Brinkmann is aware of only two documents, comprising updated financial summaries, that remain to be produced, which Brinkmann has already advised Opposer it is updating and will produce as soon as possible. Accordingly, Brinkmann requests that the Board deny the relief requested by Opposer.

Brinkmann joins Opposer's request to stay proceedings pending disposition of its Motion to Compel, and to reset the discovery and testimony periods.

## II.

### **FACTUAL BACKGROUND**

#### **A. Status of Proceedings**

On January 17, 2003, Brinkmann filed the application at issue in this opposition, Ser. No. 76/483,115, for its trademark BRINKMANN in multiple classes to cover its then-existing lines of goods. The application was published for opposition on October 5, 2004. Opposer Brink's Network filed a NOTICE OF OPPOSITION on April 1, 2005. Opposer objected to registration of BRINKMANN only in connection with "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets," in International Class 9.

On August 27, 2009, Brinkmann filed a Motion to Divide Application, requesting that the opposed goods be divided out from the remaining goods in the multi-class application. The Board granted Applicant's motion on divide on September 16, 2009 and suspended proceedings pending the completion by the Intent-to-Use Unit of the application divisional process. Proceedings remain currently suspended.

#### **B. Discovery Responses**

Opposer served its FIRST SET OF INTERROGATORIES and FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS on September 6, 2005. Brinkmann served its responses on October 11, 2005. Brinkmann served its First Amended and Supplemental Responses to Opposer's FIRST SET OF INTERROGATORIES on February 15, 2007. Brinkmann served its Supplemental Response to Opposer's Interrogatory No. 22 on September 23, 2008.

Opposer served its SECOND SET OF INTERROGATORIES on April 20, 2009 and its SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS on April 27, 2009.

Brinkmann served its responses to the SECOND SET OF INTERROGATORIES on May 26, 2009 and its responses to the SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS on June 1, 2009. Brinkmann has produced documents responsive to Opposer's FIRST AND SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS on various dates, with the latest productions sent via overnight mail on October 16 and 19, 2009. (*See* Hwang Decl., ¶¶ 5-6 & Exhs. A-B, consisting of true and correct copies of Ms. Hwang's letters to Ms. Lapidus on October 16 and 19, 2009.)

On August 25, 2009 and further on September 3, 2009, Opposer requested that Brinkmann address certain alleged deficiencies in Brinkmann's responses to Opposer's FIRST AND SECOND SETS OF INTERROGATORIES and FIRST AND SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS. (*See* Opposer's D'Andrea Decl. & Appendixes O & Q.) Brinkmann addressed Opposer's allegations on October 19, 2009, pointing out that many of Opposer's requests were improper and that Brinkmann has properly responded already to the remaining requests. (*See* Hwang Decl., ¶ 7 & Exh. C, consisting of a true and correct copy of Ms. Hwang's October 19, 2009 letter to Ms. Lapidus.) Brinkmann also supplemented its document production on October 17 and 19, 2009 in response to Opposer's request. (*See* Hwang Decl., ¶¶ 5-6 & Exhs. A-B.) Brinkmann is aware of only two documents, comprising updated financial summaries, that remain to be produced, which Brinkmann has already advised Opposer it is updating and will produce as soon as possible. (*See* Hwang Decl., ¶ 7 & Exh. C.)

**C. Deposition Availability Dates**

On May 28, 2009 and on subsequent dates, Opposer contacted Brinkmann on the availability of Mr. Brinkmann for his deposition. (*See* Opposer's D'Andrea Decl. &

Appendixes B, C, F, H & I.) Brinkmann advised Opposer that Brinkmann was working on providing availability dates. (See Opposer's D'Andrea Decl. & Appendixes D, E & J.)

On August 5, 2009, Brinkmann took the FRCP 30(b)(6) deposition of Opposer Brink's Network. (See Clark Decl., ¶ 3.) At the deposition, the subject of scheduling Mr. Brinkmann's deposition was raised. (*Id.*) Opposer's counsel and Applicant's counsel agreed that Opposer would serve a notice of deposition for Mr. Brinkmann and propose a date in the notice. (*Id.*) Counsel further agreed that the parties would be flexible and would work together to schedule a mutually convenient date if Opposer's proposed date did not work. (*Id.*) Brinkmann never, at any time, including during the deposition on August 5, 2009, agreed to have Mr. Brinkmann's deposition taken on an unspecified date to be unilaterally selected by Opposer. (*Id.* at ¶ 4.) Thereafter, Opposer served a notice of deposition and amended notice of deposition for Mr. Brinkmann, proposing October 6, 2009 as the deposition date. (See Opposer's D'Andrea Decl. & Appendixes K-L.) On August 20, 2009, Brinkmann advised Opposer that it was confirming whether Mr. Brinkmann was available for his deposition on October 6, 2009. (See Opposer's D'Andrea Decl. & Appendix N.)

On August 27, 2009, after reviewing the transcript of the FRCP 30(b)(6) deposition of Opposer taken on August 5, Brinkmann advised Opposer that Brinkmann intended to take the depositions of certain entities and individuals that were identified during Opposer's deposition as having certain areas of knowledge that Brinkmann is seeking in this proceeding. (See Hwang Decl., ¶ 8 & Exh. D, consisting of a true and correct copy of Ms. Hwang's e-mail to Ms. Lapidus on August 27, 2009.) Those proposed deponents include Broadview Security and Messrs. Robert B. Allen, Chris Cage, Kevin Yocum, McAlister C. Marshall II and Nasser Chanda. (*Id.*) Because Broadview Security and Messrs. Robert B. Allen and Chris Cage are located in the Dallas, Texas area ("Texas Deponents"), Brinkmann proposed taking their

depositions during the same trip as Opposer's deposition of Mr. Brinkmann. (*Id.*) Brinkmann further advised Opposer on August 31, 2009 that it was waiting for confirmation whether Mr. Brinkmann was available for his deposition on October 6, 2009, but that Brinkmann remained flexible in scheduling the deposition in the event that Mr. Brinkmann was not available that day. (*See* Opposer's D'Andrea Decl. & Appendix P.)

In correspondence to Brinkmann on September 18, 2009, Opposer questioned why Brinkmann wished to take the depositions of the Texas Deponents, asserting that most of the requested depositions are unnecessary and leaving it unclear whether Opposer will voluntarily and cooperatively produce such proposed deponents. (*See* Hwang Decl., ¶ 9 & Exh. E.) On September 23, 2009, Brinkmann explained why the proposed depositions were proper. (*See* Opposer's D'Andrea Decl. & Appendix R.) In the same letter, Brinkmann advised Opposer that Mr. Brinkmann was not available on October 6, 2009, and requested input from Opposer on what alternative dates were suitable, so that the parties could coordinate dates for the depositions of both Mr. Brinkmann and the Texas Deponents. (*See* Opposer's D'Andrea Decl. & Appendix R.) Instead of providing such dates, Opposer instead unilaterally demanded on September 28, 2009 that Mr. Brinkmann appear on October 14, 2009, and, incredibly, insisted on a response by the next day. (*See* Opposer's D'Andrea Decl. & Appendix S.) Brinkmann advised Opposer on September 29, 2009 that Mr. Brinkmann was not available on that date either, but remained cooperative in scheduling a mutually convenient date for both Mr. Brinkmann and the Texas Deponents. (*See* Opposer's D'Andrea Decl. & Appendix T.) On October 19, 2009, not having received a response from Opposer, Brinkmann reiterated its willingness to cooperate and again requested availability dates. (*See* Hwang Decl., ¶ 7 & Exh. C.) To date, Opposer has not provided Brinkmann with any such dates. (*See* Hwang Decl., ¶ 10.)

**III.**  
**DISCUSSION**

**A. Opposer's Motion to Compel Deposition Dates for Mr. Brinkmann is Unnecessary and Unwarranted**

Opposer has requested that “[w]ithin two weeks following the Board’s Order granting this motion, Applicant [] provide notice of at least three proposed dates for the deposition of Mr. Brinkmann to take place in Washington, D.C. The three proposed dates shall be within a four-week period following said notification. The date and location selected for the deposition of Mr. Brinkmann must be mutually agreeable to Opposer and Applicant.” (Motion at ¶ 12.) Brinkmann respectfully requests that the Board deny Opposer’s request.

**1. Brinkmann Remains Cooperative in Scheduling Mr. Brinkmann’s Deposition But Has Not Received Cooperation From Opposer Brink’s Network**

Opposer overreaches by alleging that Applicant is trying “to deny Opposer the opportunity to take the deposition of Mr. Brinkmann.” (Opposer’s Memorandum in Support of Motion at p. 7.) Mr. Brinkmann has *never*, at any time, refused to appear for his deposition.

Nor has Brinkmann engaged in any “intentional pattern and practice of delay”. To the contrary, Opposer fails to disclose that *Opposer* is the primary reason why Mr. Brinkmann’s deposition has not been scheduled.

Opposer cannot be heard to complain that Brinkmann is uncooperative merely because Mr. Brinkmann was not available on Opposer’s unilaterally chosen dates of October 6 and October 14, 2009. At the FRCP 30(b)(6) deposition of Opposer on August 5, 2009, Opposer’s counsel and Applicant’s counsel expressly agreed that the parties would be flexible and would work together to schedule a mutually convenient date if Opposer’s proposed date in the notice of opposition was not possible to meet. Brinkmann never, at any time, including



during the August 5 deposition, agreed to have Mr. Brinkmann's deposition taken on an unspecified date unilaterally selected by Opposer. Yet when informed that Mr. Brinkmann was unavailable on October 6, Opposer proceeded to unilaterally propose October 14, 2009 as a new date, without conferring with Brinkmann. Thus, it is Opposer, in fact, who has been uncooperative.

Second, Opposer has been on notice since August 27, 2009 that Brinkmann wishes to take the depositions of the Texas Deponents on the same trip as Mr. Brinkmann's deposition, but Opposer has completely stonewalled any attempts to obtain availability dates. Opposer's position is puzzling in this regard. Opposer's counsel is located in Washington D.C. and Applicant's counsel is located in Los Angeles, California. Common sense and considerations of economy and efficiency dictate that all depositions located in the Dallas, Texas area should be taken on the same trip. Courts have even made such scheduling considerations a requirement. *See, e.g., Johnson v. JP Morgan Chase Bank*, 2009 U.S. Dist. LEXIS 1197, \*8 (E.D. Cal. Jan. 9, 2009) ("As a cross-country trip will be required, for the sake of efficiency, at least all the Delaware depositions should be taken at the same time."); *Advanced Micro Devices, Inc. v. Intel Corp. (In re Intel Corp. Microprocessor Antitrust Litig.)*, 2008 U.S. Dist. LEXIS 103019, \*10 (D. Del. Dec. 18, 2008) ("[T]he Court expects AMD, Class Plaintiffs and Intel to structure the depositions so as to be efficient as possible.").

Opposer tries to argue that Brinkmann's proposed depositions only "may" take place and that it is unfair to tie Mr. Brinkmann's deposition to those of the Texas Deponents. Opposer fails to point out that the only reason Brinkmann has not noticed the depositions is because proceedings are currently suspended by the Board and Brinkmann cannot notice the depositions until proceedings are unsuspended. Furthermore, Brinkmann chose to contact Opposer's counsel as a courtesy and request mutually convenient dates, rather than unilaterally

noticing the depositions with dates selected by Brinkmann. Thus, Opposer's arguments are nothing more than an unfair attempt to take advantage of its own stonewalling with regard to cooperatively scheduling the depositions of its witnesses.

Brinkmann is still waiting for Opposer to provide availability dates for the Texas Deponents. Once such dates are proposed by Opposer, Mr. Brinkmann will cooperate in attempting to schedule his deposition for a date and place mutually convenient to both parties so that the relevant depositions can be completed together in an efficient manner.

For the foregoing reasons, Brinkmann respectfully requests that the Board deny Opposer's motion. In the alternative, Brinkmann requests that the Board direct Opposer to provide availability dates for Broadview Security and Messrs. Robert B. Allen and Chris Cage so that they can be taken on the same trip as Mr. Brinkmann's deposition.

**2. Opposer Has No Basis For Requesting that Mr. Brinkmann's Deposition Take Place in Washington, D.C.**

The discovery deposition of a natural person must be taken in the federal judicial district where the person resides or is regularly employed or at any place on which the parties agree by stipulation. *See* 37 C.F.R. § 2.120(b); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 404.03. Opposer's notice of deposition for Mr. Brinkmann identified Dallas, Texas as the location for the deposition, which was proper because Mr. Brinkmann's resides and is employed there.

Opposer now requests that Mr. Brinkmann's deposition take place in Washington D.C. as a sanction for Applicant's alleged "intentional pattern and practice of delay". Opposer tries to argue that "[t]his type of sanction has been imposed by the Board in the past, and Opposer believes that the same relief is warranted under the present circumstances." (Opposer's Memorandum in Support of Motion at p. 7.) Opposer only cites to one case, *NationsBank Corp.*

v. *First Nations Financial Services Co.*, 2000 TTAB LEXIS 69 (TTAB 2000) (not citable as precedent) and Opposer's reliance on the case is misplaced. In *NationsBank*, the Board granted the opposer's motion for sanctions by requiring the applicant's president to travel to a location near counsel for opposer's offices for a deposition. In *NationsBank*, however, the deposition of the applicant's president had already taken place but "applicant's counsel and the witness [] depart[ed] from the deposition before it was completed." *NationsBank* at \*8. The Board noted such action was "patently wrong" and that the deposition would have to be reconvened, but then in that case, "it ma[d]e sense for the parties to utilize that opportunity to have applicant's counsel take [direct] testimony from the witness[]" as well. *NationsBank* at \*8-9.

Brinkmann, in contrast, has not engaged in any "wrong" actions that would warrant contravention of 37 C.F.R. § 2.120(b). As discussed above, any "delay" alleged by Opposer has largely been the result of Opposer's own stonewalling in this proceeding. Brinkmann has been waiting patiently for Opposer to identify dates when its deponents are available for their respective depositions in the Dallas, Texas area, so that all the depositions can be taken efficiently on the same trip for both Opposer's counsel and Applicant's counsel. Even the case cited by Opposer, *NationsBank*, supports the Board's policy of conducting discovery as efficiently as possible.

For the foregoing reasons, Brinkmann respectfully requests that the Board deny Opposer's motion on this issue.

**B. Opposer's Motion to Compel Supplementation of Brinkmann's Discovery Responses is Unnecessary and Unwarranted**

Opposer has requested that Applicant "[s]upplement Applicant's discovery responses to address all deficiencies raised by Opposer within two weeks following the Board's

Order granting this motion.” Brinkmann respectfully requests that the Board deny Opposer’s motion.

1. **Opposer Has Failed to Comply with 37 C.F.R. § 2.120(e)**

Opposer has failed to append to its motion copies of the specific document requests, interrogatories and corresponding responses that Opposer alleges are deficient. However, all motions to compel must comply with 37 C.F.R. § 1.120(e), which states in relevant part as follows:

The motion [to compel] shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying.

37 C.F.R. § 1.120(e); *see also* TBMP § 523.02. The policy underlying 37 C.F.R. § 1.120(e) is evident. A party bringing a motion to compel should not be allowed to allege discovery deficiencies without an objective review by the Board of the discovery requests to determine whether they were proper in the first place and of the responses to determine whether the responses were deficient or not. *Fidelity Prescriptions, Inc. v. Medicine Chest Discount Centers, Inc.*, 191 USPQ 127 (TTAB 1976) (Board must be able to render a meaningful decision on a motion to compel).

Opposer merely states in its motion that the Applicant’s alleged deficiencies are identified in correspondence to Applicant’s counsel on August 25, 2009 and September 3, 2009. Opposer’s failure to append the relevant document requests, interrogatories and corresponding responses means that the Board has no meaningful way of determining whether Opposer’s allegations are truthful or not. Opposer expects the Board to take its word for it that Applicant’s responses are deficient, when, in fact, they are not. As explained below, Brinkmann has

supplemented its document production (except for two miscellaneous documents which Brinkmann expects to supplement as soon as possible) and made proper objections to remaining discovery requests such that no supplementation is required.

The Board should deny Opposer's motion on this basis alone.

**2. Most of Opposer's Requests for Supplementation are Improper**

Opposer has demanded that Brinkmann supplement certain alleged deficiencies in its discovery responses, but most of Opposer's discovery requests are clearly improper under the Trademark Rules of Practice, which Brinkmann has pointed out in a letter to Opposer dated October 19, 2009. (*See* Hwang Decl., ¶ 7 & Exh. C.) Accordingly, no supplementation is necessary for those requests.

By way of example, Opposer's Interrogatory Nos. 16, 18 and 21 in its FIRST SET OF INTERROGATORIES requested "the identification of all documents and tangible things upon which Applicant intends to rely to support the denial" of Opposer's various causes of action. Brinkmann properly objected to these interrogatories. "A party need not, in advance of trial, specify in detail the evidence it intends to present, or identify the witnesses it intends to call, except that the names of expert witnesses it intends to be called are discoverable." TBMP § 414; *Time Warner Entertainment Co. v. Jones*, 65 USPQ.2d 1650, 1657 (TTAB 2002) (interrogatory requesting that opposer "identify each and every fact, document and witness in support of its pleaded allegations" was equivalent to request for identification of fact witnesses and trial evidence prior to trial, and therefore improper."). Accordingly, Brinkmann does not need to supplement its responses to those discovery requests that are improper.

The Board should deny Opposer's motion on this basis as well.

3. **Brinkmann Has Produced Nearly All Documents Responsive to Opposer's First and Second Requests for Production of Documents and Will Produce the Two Remaining Documents As Soon As They Are Updated**

Brinkmann supplemented its previous extensive document production by sending responsive non-privileged documents to Opposer via overnight mail on October 16 and 19, 2009, Bates numbered BM 014902 – BM 018857. (See Hwang Decl., ¶¶ 5-6 & Exhs. A-B.) After conducting a reasonable search and investigation of its records, Brinkmann believes it has produced nearly all documents to date which are responsive to Opposer's FIRST AND SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS. Brinkmann will supplement its document production with two more documents, comprising financial summaries, which Brinkmann will produce to Opposer as soon as they are properly updated. Financial data was previously produced but those documents are now outdated for various reasons (*e.g.*, introduction of a new product after the financial data was produced to Opposer). Brinkmann has advised Opposer that Brinkmann is working on updating the information and that it will provide such information as soon as possible. (See Hwang Decl., ¶ 7 & Exh. C.)

Brinkmann's production of documents and anticipated supplementation of the requested financial data renders Opposer's motion moot. Accordingly, Opposer's motion on this issue should be denied as well.

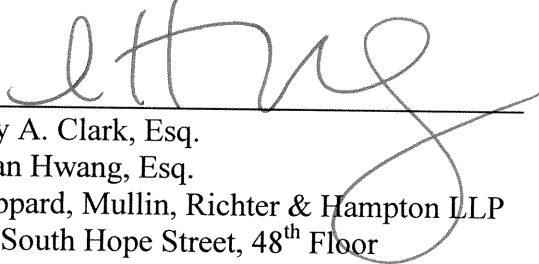
IV.

**CONCLUSION**

For all the reasons stated herein, Brinkmann respectfully requests that the Board deny Opposer's motion to compel Mr. Brinkmann's deposition in Washington D.C. and to

supplement its discovery responses. Brinkmann joins Opposer's request to stay proceedings pending disposition of its Motion to Compel, and to reset the discovery and testimony periods.

Dated: October 21, 2009



---

Gary A. Clark, Esq.  
Susan Hwang, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071  
Tel.: (213) 620-1780  
Fax: (213) 620-1398

Attorneys for Applicant  
THE BRINKMANN CORPORATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**DECLARATION OF GARY A. CLARK**

I, Gary A. Clark, hereby declare as follows:

1. I am a partner at the law firm of Sheppard, Mullin, Richter & Hampton LLP, counsel of record for Applicant The Brinkmann Corporation.

2. I make this declaration in connection with an opposition proceeding, No. 91164764, pending in the U.S. Patent and Trademark Office. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration and am competent to testify to those facts.

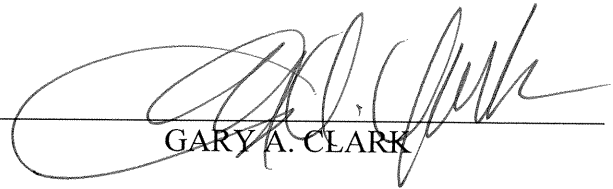
3. On August 5, 2009, I took the FRCP 30(b)(6) deposition of Opposer Brink's Network. Just prior to the commencement of the deposition, Opposer's counsel Alan Cooper raised the subject of scheduling Mr. Brinkmann's deposition was raised. I discussed with Mr. Cooper that Opposer would serve a notice of deposition for Mr. Brinkmann and propose a date in the notice. I specifically elicited from Mr. Cooper an agreement that Opposer would be flexible and would work with Applicant to schedule a mutually convenient date if Opposer's proposed date did not work. Mr. Cooper readily agreed with me.



4. Neither I nor, to my knowledge, associate Susan Hwang, ever agreed at any time, including during the deposition on August 5, 2009, to have Mr. Brinkmann's deposition taken on an unspecified date to be unilaterally selected by Opposer.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California, on October 20, 2009.

By: \_\_\_\_\_

  
GARY A. CLARK

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**DECLARATION OF SUSAN HWANG**

I, Susan Hwang, hereby declare as follows:

1. I am an associate at the law firm of Sheppard, Mullin, Richter & Hampton LLP, counsel of record for Applicant The Brinkmann Corporation.

2. I make this declaration in connection with an opposition proceeding, No. 91164764, pending in the U.S. Patent and Trademark Office. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration and am competent to testify to those facts.

3. On August 5, 2009, I attended the FRCP 30(b)(6) deposition of Opposer Brink's Network taken by partner Gary Clark. Just prior to the commencement of the deposition, Opposer's counsel Alan Cooper raised with Mr. Clark the subject of scheduling Mr. Brinkmann's deposition. Mr. Clark and Mr. Cooper discussed that Opposer would serve a notice of deposition for Mr. Brinkmann and propose a date in the notice. Mr. Clark specifically elicited from Mr. Cooper an agreement that Opposer would be flexible and would work with

Applicant to schedule a mutually convenient date if Opposer's proposed date did not work. Mr. Cooper readily agreed with Mr. Clark.

4. Neither I nor, to my knowledge, Mr. Clark, ever agreed at any time, including during the deposition on August 5, 2009, to have Mr. Brinkmann's deposition taken on an unspecified date to be unilaterally selected by Opposer.

5. Attached as Exhibit A is a true and correct copy of a letter dated October 16, 2009 from Susan Hwang, counsel for Applicant, to Nancy S. Lapidus, counsel for Opposer.

6. Attached as Exhibit B is a true and correct copy of a one page letter dated October 19, 2009 from Ms. Hwang to Ms. Lapidus.

7. Attached as Exhibit C is a true and correct copy of an 8 page letter dated October 19, 2009 from Ms. Hwang to Ms. Lapidus.

8. On August 27, 2009, after reviewing the transcript of the FRCP 30(b)(6) deposition of Opposer taken on August 5, 2009, counsel for Brinkmann sent an e-mail to counsel for Opposer stating that Brinkmann intended to take the depositions of certain entities and individuals that were identified during Opposer's deposition as having certain areas of knowledge that Brinkmann is seeking in this proceeding. Those proposed deponents include Broadview Security and Messrs. Robert B. Allen, Chris Cage Kevin Yocum, McAlister C. Marshall II and Nasser Chanda. Because Broadview Security and Messrs. Robert B. Allen and Chris Cage are located in the Dallas, Texas area, Brinkmann proposed taking their depositions during the same trip as Opposer's deposition of Mr. Brinkmann. Attached as Exhibit D is a true and correct copy of an e-mail dated August 27, 2009 from Ms. Hwang to Ms. Lapidus.

9. Attached as Exhibit E is a true and correct copy of a letter dated September 18, 2009 from Ms. Lapidus to Ms. Hwang.

10. To date, Opposer has not provided Brinkmann with any availability dates for the depositions of Broadview Security and Messrs. Robert B. Allen, Chris Cage Kevin Yocum, McAlister C. Marshall II and Nasser Chanda.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California, on October 20, 2009.

By: \_\_\_\_\_

  
SUSAN HWANG

## **Exhibit A**



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448  
213-620-1780 office | 213-620-1398 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Susan Hwang  
Writer's Direct Line: 213-617-4279  
[shwang@sheppardmullin.com](mailto:shwang@sheppardmullin.com)

Our File Number: 0SEM-116943

October 16, 2009

***VIA E-MAIL AND FEDEX***

Nancy S. Lapidus, Esq.  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764  
Brink's Network v. The Brinkmann Corporation

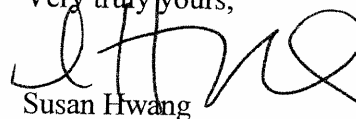
Dear Nancy:

With the FedEx<sup>®</sup> copy of this letter, we are forwarding Brinkmann's supplemental document production numbered BM 014902 – BM 017691. Documents designated "highly confidential" are produced pursuant to the terms of the Stipulated Protective Order. Please note that documents BM 015975 – BM 017691 are being produced as black and white copies. Color copies can be prepared if Brink's Network prefers them and will reimburse for the copying charges.

Brinkmann reserves the right to supplement its production should it identify any additional responsive documents.

Also enclosed is the verification for Brinkmann's First Amended and Supplemental Responses to Opposer's FIRST SET OF INTERROGATORIES.

Very truly yours,



Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH402269154.1

Encls.

## **Exhibit B**



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448  
213-620-1780 office | 213-620-1398 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Susan Hwang  
Writer's Direct Line: 213-617-4279  
[shwang@sheppardmullin.com](mailto:shwang@sheppardmullin.com)

October 19, 2009

Our File Number: 0SEM-116943

***VIA E-MAIL AND FEDEX***

Nancy S. Lapidus, Esq.  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

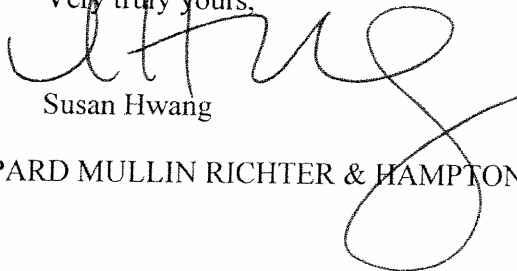
Re: TTAB Opposition Proceeding No. 91164764  
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

With the FedEx® copy of this letter, we are forwarding Brinkmann's supplemental document production numbered BM 017692 – BM 018857. Documents designated "highly confidential" are produced pursuant to the terms of the Stipulated Protective Order. Please note that documents BM 017820 – BM 018857 are being produced as black and white copies. Color copies can be prepared if Brink's Network prefers them and will reimburse for the copying charges.

Brinkmann reserves the right to supplement its production should it identify any additional responsive documents.

Very truly yours,



Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH\402272225.1

Encls.



## **Exhibit C**



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448  
213-620-1780 office | 213-620-1398 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Susan Hwang  
Writer's Direct Line: 213-617-4279  
[shwang@sheppardmullin.com](mailto:shwang@sheppardmullin.com)

October 19, 2009

Our File Number: 0SEM-116943

***VIA E-MAIL***

Nancy S. Lapidus, Esq.  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764  
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

This letter is to address Mr. Brinkmann's availability for his deposition and Brink's Network's request for Brinkmann to further amend and supplement certain of its responses to Brink's Network's FIRST AND SECOND SET OF INTERROGATORIES, as detailed in your letters of August 25, 2009 and September 3, 2009.

A. Deposition Availability Dates

In your motion to compel you have requested availability dates for Mr. Brinkmann's deposition, and moreover for the deposition to be taken in Washington D.C. This is despite our repeated requests in our e-mails of August 27, 2009, September 3, 2009, September 28, 2009 and our letter of September 23, 2009 for availability dates of Broadview Security and Messrs. Chris Cage and Robert B. Allen, so that those depositions could be scheduled on the same trip to the Dallas, Texas area. We have not received any availability dates. Nor have we heard back from you on the availability of Hampton Products International Corporation and Messrs. Kevin Yocum, McAlister C. Marshall II and Nasser Chanda for their respective depositions. Moreover, your request that Mr. Brinkmann travel to Washington D.C. is contrary to the TRADEMARK RULES OF PRACTICE. *See* 37 C.F.R. § 2.120(b); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 404.03(a).

We reiterate our willingness to cooperate in scheduling Mr. Brinkmann's deposition with the other deponents in Texas and, in this regard, we look forward to hearing from you on availability dates. We also look forward to hearing from you on the availability of the other identified deponents.

Nancy S. Lapidus, Esq.

October 19, 2009

Page 2

B. Interrogatory Responses and Document Production

1. Production of Documents

You have requested confirmation that Brinkmann has produced all responsive documents to each Request in Opposer's FIRST AND SECOND SETS OF REQUESTS FOR PRODUCTION. After conducting a reasonable search and investigation of its records, Brinkmann believes it has produced all documents to date which are responsive to the requests, except for certain financial documents (please see discussion in Sections B.3-B.6). Please note that Brinkmann's investigations are still ongoing and discovery has not yet concluded. Brinkmann reserves the right to supplement its production should it identify any additional responsive documents.

2. Bates Numbering of Production Documents

You have requested supplemental responses to each of Opposer's Requests for Production and supplemental responses to each of Opposer's Interrogatories to identify the Bates numbers of the specific responsive documents. You allege that this is the "same request" that Brinkmann made of Brink's Network.

Contrary to your assertion, Brinkmann never made the "same request." First, Brinkmann notes that Brink's Network has provided Bates numbers in response to only four of Brinkmann's interrogatories, not all of them. Nor has Brinkmann requested or Brink's Network provided Bates numbers in response to each of Brinkmann's document requests.

Second, the Bates numbers provided by Brink's Network were provided because Brink's Network specifically chose to provide Bates numbers instead of written responses to Brinkmann's interrogatories. By way of example, Brinkmann's Interrogatory No. 6 requested that Brink's Network state the annual dollar amount of sales in the United States of the Brink's Products or Services under the Brink's Marks. Brink's Network, in its original response, did not provide a written description of the dollar amounts nor did it provide a chart or summary of the dollar amounts. Instead, Brink's Network merely responded that the information was contained in Brink's Network's annual reports. As you should recall, Brinkmann requested that Brink's Network supplement its response by providing the figures in the response directly, or providing Bates numbers of the specific pages of the annual reports. Brink's Network chose to supplement its response by providing the Bates numbers. Accordingly, this is not the "same request" that Brink's Network is making of Brinkmann, because Brinkmann has either provided written responses to the interrogatories which contain the information requested or provided a Bates numbered document which contains the information requested. Brinkmann will not provide Bates numbers for each interrogatory and each document request simply for the sake of providing them, which is unnecessary, unduly burdensome and unreasonable.

3. Interrogatory No. 7

You have requested that Brinkmann supplement its response to Interrogatory No. 7, which requested the annual dollar amount of revenues related to Brinkmann's sales of its home security products under the BRINKMANN mark. Specifically, you allege that the document Bates numbered BM 13005 and titled "Motion Sensitive Light Sales – Complete History through November 30, 2006" is "incomplete" because the title only references "Motion Sensitive Lights" rather than home security products. You have requested financial information about all the home security products identified in response to Interrogatory No. 6. You have also requested clarification about the figures contained in document BM 013005 and an update for the annual dollar amount of revenues of the home security products for the period 2007 to the present.

Please note that Brinkmann intends to produce an updated document that provides the requested information. First, your assumption that the original document BM 013005 is "incomplete" simply by sake of the title is incorrect. However, the document did not contain information about a particular home security product, the SL-8 Motion Activated Lighting System, which was introduced after document BM 013005 was produced. Second, the information provided was on a calendar year basis and Brinkmann is modifying document BM 013005 to present the information on a fiscal year basis. Finally, a question has been raised about the accuracy of BM 013005 because Brinkmann is involved in private labeling of products for certain retailers and some of the information contained in BM 013005 might have included sales data for private labeled products as opposed to BRINKMANN branded products. Accordingly, Brinkmann is working on updating the sales information, including sales information for 2007-2008, and will provide such information as soon as possible. Information for fiscal year 2009 is not yet available.

4. Interrogatory No. 8

You have requested that Brinkmann supplement its response to Interrogatory No. 8, which requested the annual dollar amount of revenues related to Brinkmann's sale of all products and services under the mark BRINKMANN for the past 15 years. Specifically, you have requested that Brinkmann update document Bates numbered BM 013006 and titled "The Brinkmann Corporation Net Sales – Fiscal Year 1992 through Fiscal Year 2006" to update it for fiscal years 2007-2009.

Please note that Brinkmann intends to produce an updated document that provides the requested information. Again, however, a question has been raised about the accuracy of BM 013006 because Brinkmann is involved in private labeling of products for certain retailers and some of the information contained in BM 013006 might have included sales data for private labeled products as opposed to BRINKMANN branded products. Accordingly, Brinkmann is working on updating the sales information, including sales information for 2007 to 2008, and

Nancy S. Lapidus, Esq.  
October 19, 2009  
Page 4

will provide such information as soon as possible. Information for fiscal year 2009 is not yet available.

5. Interrogatory No. 9

You have requested that Brinkmann supplement its response to Interrogatory No. 9, which requested the annual dollar amount spent by Brinkmann on advertising and/or promoting its home security products under the mark BRINKMANN. Specifically, you allege that the document Bates numbered BM 013005 and titled "Motion Sensitive Light Sales – Complete History through November 30, 2006" is "incomplete" because the title only states "Motion Sensitive Lights." For some reason, you appear to believe that the document BM 013005 does not contain information about the seven home security products identified in response to Interrogatory No. 6. You have also requested clarification about the figures contained in document BM 013005 and an update for the annual dollar amount spent on advertising and promotion for the home security products for the period 2007 to the present.

Brinkmann reiterates the comments made in Section B.3 above. Brinkmann is working on updating the advertising information, including advertising information for 2007 to 2008, and will provide such information as soon as possible. Information for fiscal year 2009 is not yet available.

6. Interrogatory No. 10

You have requested that Brinkmann supplement its response to Interrogatory No. 10, which requested the annual dollar amount spent by Brinkmann on advertising and/or promoting all goods and services under the mark BRINKMANN for the past 15 years. Specifically, you have requested that Brinkmann update document Bates numbered BM 013006 and titled "The Brinkmann Corporation Net Sales – Fiscal Year 1992 through Fiscal Year 2006" to update it for fiscal years 2007-2009.

Brinkmann reiterates the comments made in Section B.4 above. Brinkmann is working on updating the advertising information, including advertising information for 2007 to 2008, and will provide such information as soon as possible. Information for fiscal year 2009 is not yet available.

7. Interrogatory No. 12

You have requested that Brinkmann supplement its response to Interrogatory No. 12, which requested a description of the channels of trade for Brinkmann's home security systems and components sold under the BRINKMANN mark. Specifically, you have requested that Brinkmann update the Brinkmann Customer List (document labeled BM 013007 – 013037) to identify retailers that sell Brinkmann's home security products from 2007 to 2009.

Brinkmann is not required to supplement its document production. “The classes of customers for a party’s involved goods or services are discoverable. In contrast, the names of customers constitute confidential information and generally are not discoverable, even under protective order.” See TBMP § 414; *The J.B. Williams Co. v. Pepsodent G.m.b.H.*, 188 USPQ 577, 580 (TTAB 1975) (must identify class of customers who purchase products under mark, but not names of customers). Brinkmann’s response already provided about the types of retailers that sell Brinkmann’s home security products under BRINKMANN, which have not changed. The customer list was produced as merely an accompaniment to Brinkmann’s response. Thus, Interrogatory No. 12 does not require supplementation, and Brinkmann is under no obligation to update its customer list.

8. Interrogatory No. 13

You have requested that Brinkmann supplement its response to Interrogatory No. 13, which requested a description of the purchasers and prospective purchasers for Brinkmann’s home security systems and components sold under the BRINKMANN mark. Curiously, you state, “Applicant is in a much better position of understanding and explaining any information contained within BM 013007 – 013037, which purport to describe the purchasers and prospective purchasers of Applicant’s BRINKMANN home security systems and components therefor.”

Brinkmann has never “purported” that the Brinkmann Customer List (document labeled BM 013007 – BM 013037) describes the purchasers and prospective purchasers of Applicant’s BRINKMANN home security products. Brinkmann produced that document in response to Interrogatory No. 12, which requested information about Brinkmann’s channels of trade. Your statement, thus, is incorrect. Brinkmann understands “purchasers and prospective purchasers” to mean the end users of the home security products and in this regard, Brinkmann is not aware of any marketing or demographic studies identifying or describing the attributes or characteristics of purchasers and prospective purchasers of its identified products. Since the identified products are designed and intended for use in and around homes, Brinkmann believes that the purchasers and prospective purchasers of such products are primarily homeowners. Please confirm whether Brinkmann’s understanding of “purchasers and prospective purchasers” comports with yours.

9. Interrogatory No. 14

Interrogatory No. 14 requested a description of any instances in which Brinkmann’s use of BRINKMANN has resulted in actual confusion or mistake with respect to the source and/or sponsorship of Brinkmann’s home security products. Brinkmann previously responded that it is not aware of any such instances. You have requested that Brinkmann confirm its response and document production.

Nancy S. Lapidus, Esq.

October 19, 2009

Page 6

Brinkmann's response has not changed, thus there is no need to amend or supplement its response. Brinkmann is not aware of any documents response to the interrogatory.

10. Interrogatory Nos. 16, 18 and 21

You have requested that Brinkmann supplement its responses to Interrogatory Nos. 16, 18 and 21, which requested that Brinkmann identify all documents upon which it intends to rely on to support the denials in paragraphs 20, 21 and 24 of Brinkmann's Answer to the Notice of Opposition.<sup>1</sup> Specifically, you have requested that Brinkmann confirm that all responsive documents have been produced and that Brinkmann provide the Bates numbers of the specific responsive documents.

Leaving aside the fact that Interrogatory Nos. 16, 18 and 21 are outdated<sup>2</sup>, Brinkmann stands by its original objections, which were entirely proper. "A party need not, in advance of trial, specify in detail the evidence it intends to present, or identify the witnesses it intends to call, except that the names of expert witnesses it intends to be called are discoverable." TBMP § 414; *Time Warner Entertainment Co. v. Jones*, 65 USPQ.2d 1650, 1657 (TTAB 2002) (interrogatory requesting that opposer "identify each and every fact, document and witness in support of its pleaded allegations" was equivalent to request for identification of fact witnesses

---

<sup>1</sup> Interrogatory No. 16 requested identification of "all documents and tangible things upon which Applicant intends to rely to support the denial in ¶ 20 of its Answer of the allegation that Applicant's mark BRINKMANN, as used in connection with home security systems and components therefor, so resembles Opposer's previously used and/or registered marks as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act."

Interrogatory No. 18 requested identification of "all documents and tangible things upon which Applicant intends to rely to support the denial in ¶ 21 of its Answer of the allegation that Applicant's use of the mark BRINKMANN in connection with home security systems and components therefor dilutes and/or is likely to dilute the distinctiveness of Opposer's famous mark BRINK'S within the meaning of § 43(c) of the Federal Trademark Act."

Interrogatory No. 21 requested identification of "all documents and tangible things on which Applicant intends to rely to support its denial in ¶ 24 of its Answer of the allegation that Applicant's use of the registration symbol ® in association with the mark BRINKMANN for home security systems and components therefor constitutes a misuse of the registration symbol in violation of § 29 of the Federal Trademark Act and deceives the consuming public into believing that the mark is registered."

<sup>2</sup> You have neglected to take into account that Brink's Network has filed a SECOND AMENDED NOTICE OF OPPOSITION, which changed the paragraph numbering in the original Notice of Opposition. Brinkmann's ANSWER TO THE SECOND AMENDED NOTICE OF OPPOSITION necessarily has different paragraph numbering as well, rendering Brink's Network's interrogatories technically outdated.

and trial evidence prior to trial, and therefore improper.”). Accordingly, Brinkmann does not need to supplement its responses.

11. Interrogatory Nos. 26 and 27 and Document Request Nos. 4 and 5

You have requested that Brinkmann identify the Bates numbers of the documents that demonstrate use of the mark BRINKMANN for home security systems and components in each of the categories described in subparagraphs (i) – (viii) of Brinkmann’s responses to Interrogatories Nos. 26 and 27. Brinkmann reiterates the comments made in Section B.2 above. Brinkmann has fully responded to Interrogatory Nos. 26 and 27 in its written response by listing the means by which Brinkmann uses BRINKMANN as a trademark. Brinkmann is not required to identify each Bates numbered document, which in addition to being unnecessary, is unduly burdensome and unreasonable.

12. Interrogatory Nos. 28 and 29

You have requested supplemental answers to Interrogatory Nos. 28 and 29 contained in Opposer’s SECOND SET OF INTERROGATORIES, which requested whether Applicant’s combined declaration of use and renewal for registration of Reg. No. 1,153,730 deleted certain goods. As made clear in Brinkmann’s objections to Interrogatory Nos. 28 and 29, the interrogatories are not relevant to the claims and defenses in this proceeding. “A party need not provide discovery with respect to those of its marks and goods and/or services that are not involved in the proceeding and have no relevance thereto.” *See* TBMP § 414; *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147, 149 n. 2 (TTAB 1985) (information regarding goods other than those in involved application and registration is irrelevant). Accordingly, Brinkmann does not need to supplement its responses.

13. Verification of Interrogatory Responses

You have requested verification of Applicant’s First Amended and Supplemental Responses to OPPOSER’S FIRST SET OF INTERROGATORIES and Applicant’s Supplemental Response to Opposer’s Interrogatory No. 22. With respect to verification of Applicant’s First Amended and Supplemental Responses to OPPOSER’S FIRST SET OF INTERROGATORIES, the verification was already sent to you by letter on October 16, 2009. With respect to Applicant’s Supplemental Response to Opposer’s Interrogatory No. 22, the Supplemental Response contained the verification, as is clearly shown by Mr. Brinkmann’s signature on page 8 of the Response. Please explain why you believe the Supplemental Response to Opposer’s Interrogatory No. 22 was not verified.

\* \* \* \* \*



SHEPPARD MULLIN RICHTER & HAMPTON LLP

Nancy S. Lapidus, Esq.

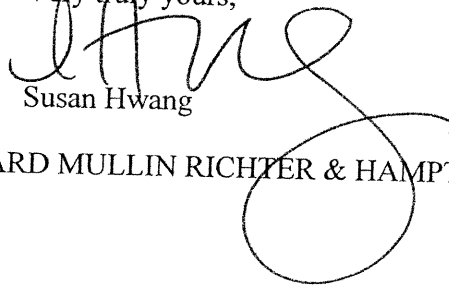
October 19, 2009

Page 8

We look forward to hearing from you on availability dates for the depositions of Broadview Security, Hampton Products and the various Brink's Network and Broadview Security individuals.

Please contact us if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SHWANG', with a large circular flourish at the end.

Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH\402269565.1

cc: Gary A. Clark, Esq.

## **Exhibit D**

## Susan Hwang

---

**From:** Susan Hwang  
**Sent:** Thursday, August 27, 2009 7:47 PM  
**To:** 'Lapidus, Nancy'  
**Cc:** Gary Clark; 'Cooper, Alan'  
**Subject:** Brink's Network and Brinkmann - Deposition Dates

Nancy,

Brinkmann intends to take the depositions of the following individuals:

Kevin Yocum (Richmond, VA)  
McAlister C. Marshall II (Richmond, VA)  
Nasser Chanda (Richmond, VA)  
Chris Cage (Coppell, TX)  
Robert B. Allen (Irving, TX)

and the deposition under FRCP 30(b)(6) and production of documents by Broadview Security.

Will you be representing these witnesses, and if so, can we agree that the individual depositions can go forward on notice alone or, alternatively, will you accept service of subpoenas for them? Similarly, will you accept service of document and deposition subpoenas on Broadview Security? For Broadview, Mr. Cage and Mr. Allen, we would like to take their depositions on the same trip as your deposition of Mr. Brinkmann. Therefore, we would like to resolve this issue as soon as possible so that there will be adequate time for Broadview to produce documents and prepare a witness to testify.

We would appreciate a response by Monday, August 31, if at all possible.

We look forward to hearing from you.

Regards,  
Susan

10/19/2009

## **Exhibit E**

**Nancy S. Lapidus**  
Partner

T 202.383.6865

F 202.383.7195

lapidusN@howrey.com

September 18, 2009

Via E-mail  
Confirmation Copy by US Mail

Susan Hwang, Esquire  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.  
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

This letter responds to your email dated August 27, 2009, in which Brinkmann stated its intent to take a Rule 30(b)(6) deposition of Broadview Security and the depositions of Kevin Yocum, McAlister Marshall, Nasser Chanda, Chris Cage and Robert Allen. We also address the upcoming deposition of Mr. Brinkmann noticed for October 6.

Howrey will represent Broadview Security in connection with the 30(b)(6) deposition and related production of documents. We will accept service of the subpoenas on behalf of Broadview Security. Please provide us with the topics for the 30(b)(6) deposition so that we can identify the appropriate witness(es) and determine the dates on which the witness(es) will be available. It is unlikely that we can schedule the 30(b)(6) deposition of Broadview Security to coincide with the deposition of Mr. Brinkmann currently noticed for October 6. Nonetheless, we do intend to take the deposition of Mr. Brinkmann as previously noticed for October 6.

McAlister Marshall is the General Counsel of The Brink's Company. While we agree that lawyers are not immune to depositions just because they are lawyers, you must provide some legitimate basis for taking his deposition. Mr. Lennon did not testify as to Mr. McAlister's knowledge of any particular subject as to which Mr. Lennon was designated to testify as a Rule 30(b)(6) deponent. Rather, Mr. McAlister was identified simply as an in-house counsel who worked with Mr. Lennon in preparation for Mr. Lennon's testimony. Mr. Lennon's testimony does not serve as a valid basis for noticing the deposition of Mr. McAlister.

Messrs. Yocum and Cage also serve as in-house counsel for The Brink's Company and its affiliates. Mr. Lennon testified that Mr. Yocum and Mr. Cage have knowledge of the Hampton license. He also testified that Brink's Home Security was responsible for the scope and implementation of the Hampton license prior to October 31, 2008, and that Mr. Nasser Chanda took responsibility for the Hampton relationship after the spin-off of Brink's Home Security. We will insure that the

Susan Hwang, Esquire  
September 18, 2009  
Page 2

Broadview Security Rule 30(b)(6) deponent is knowledgeable with respect to Brink's Home Security's relationship with Hampton prior to October 31, 2008. We also believe that Mr. Chanda can sufficiently testify about the current relationship of Opposer and Hampton. Thus, there is no need to depose Mr. Yocum or Mr. Cage at this time. In the event the depositions of the Broadview Security 30(b)(6) witness and Mr. Chanda are not sufficient, we will consider producing Mr. Yocum and/or Mr. Cage for depositions.

For the same reason, we do not believe that a deposition of Mr. Robert Allen is necessary at this time. Mr. Lennon testified that Mr. Allen was the President of Brink's Home Security at the time Brink's Home Security was responsible for the license relationship with Hampton. As noted above, we will insure that the Broadview Security 30(b)(6) deponent is knowledgeable about the Hampton license and the scope of the relationship between Brink's Home Security and Hampton prior to October 31, 2008. The mere fact that Mr. Allen signed a license does not necessarily mean that he is the most knowledgeable individual with respect to the implementation of the terms of that license.

Regarding the deposition of Mr. Brinkmann, please provide us with the supplemental information and documents that we requested in our letters of August 25, 2009 and September 3, 2009. In the absence of satisfactory discovery responses by September 23, 2009, we will plan to take Mr. Brinkmann's deposition on October 6, 2009, and reserve our right to continue the deposition at a later time after Brinkmann complies fully with its discovery obligations.

Sincerely,

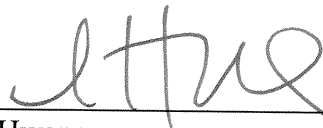
  
Nancy S. Lapidus

NSL/Inf

cc: Kevin Yocum, Esq.  
Alan Cooper, Esq.

CERTIFICATE OF SERVICE

This is to certify that I have this day, October 21, 2009, caused to be served a copy of the foregoing “Applicant Brinkmann’s Opposition to Opposer’s Motion to Compel Deposition of Mr. J. Baxter Brinkmann” by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Nancy S. Lapidus, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

  
\_\_\_\_\_  
Susan Hwang